THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO. 8297 OF 1993

Date: 22.12.2006

Between:

G.V. Narasa Reddy and two others.

… Petitioners

and

A.P. Khadi and Village Industries, Board, Hyderabad, rep., by Executive Officer and three others.

… Respondents.

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO. 8297 OF 1993

ORDER:

Questioning the action of the respondents, in proceeding against the petitioners under the Revenue Recovery Act, as illegal and void, seeking a declaration that they are not liable for the amounts due from M/s Radheshyam Khadi and Village Industries Association, Narsapur and for a direction to the respondent authorities to forbear from proceeding against them, W.P. No. 8297 of 1993 is filed.

Facts, in brief, are that the petitioners were issued a notice, under Section 8 of the Revenue Recovery Act, by the Mandal Revenue Officer, Dilawarapoor Mandal for recovery of Rs.11,74,800/-. The petitioners made enquiries and learnt that these amounts were due from M/s Radheshyam Khandasari Unit, Narsapur, a Unit incorporated under Section 3 of the A.P. Non-trading Companies Act, 1962, of which their father was the President. The 1st respondent had sanctioned a loan of Rs.4,80,000/- on 10.09.1976 for establishing the said Unit, and, on the Government of A.P. issuing a licence, permission was granted by the respondent-board for purchase of machinery. However, for various reasons, the Unit did not commence production. The petitioner's father expired in November, 1986. The petitioners

preferred an appeal to the Government on 29.04.1992, against the demand notice dated 06.03. 1992, contending that they were not liable to pay the said amount as they had not obtained any loan from the 1st respondent Board. The Government initially granted stay of recovery. The 1st respondent, vide proceedings dated 19.05.1992, asked the District Collector to stop recovery until further orders. Thereafter the Chief Executive of the Board, vide proceedings dated 14.07.1992, asked the petitioners to verify the accounts and pay the amounts due at the earliest. Thereafter, in November 1992, the petitioners were called upon to arrange payment within a week and were informed that, on their failure to do so, the Collector, Adilabad would be requested to take action against them under the Revenue Recovery Act. The petitioners dis-owned their liability and called upon the Board to recover the amounts due from M/s Radheshyam Khadi and Village Industries which owned substantial movable and immovable properties. Petitioners submitted a representation to the government on 11.03.1993 and the then Minister for Small Scale Industries, on 12.03.1993, directed further proceedings to be stayed, despite which a distraint order under Section 8 of the Revenue Recovery Act was issued by the Mandal Revenue Officer, Dilawarpur on 23.05.1993. Petitioners would refer to Section 19 of the A.P. Khadi and Village Industries Boards Act, 1958 which provides for recovery of the amount due, by any institution or person, under the Revenue Recovery Act, on a certificate issued by the Board, for the amounts due, to the Collector of the District. Under the proviso to sub-section (2) thereof no such certificate shall be

issued unless the defaulter has been given an opportunity of making a representation against the action proposed. According to the petitioners, they were neither put on notice nor given an opportunity of being heard before action was initiated for recovery of the amounts due. As no liability was fixed on them, they were not liable to repay the amounts claimed as due, and the impugned order was illegal. Petitioners would further submit that no notice was given to the Association for recovery of the amounts nor was any action taken against them though the machinery and land stood in its name. Petitioners would submit that they came to know that their father had executed a security bond in favour of the respondent board on 24.01.1976 for a sum of Rs.2,68,500/- and that agricultural lands were given as security. According to the petitioners, since the security given was not for the benefit of the joint family, their father had no right to give security of their ancestral property. Petitioners would submit that though the security offered by the petitioner's father was only for a sum of Rs.2,68,500/-, the amounts mentioned in the distraint order was for a sum of Rs.12,10,800/-. Petitioners plead ignorance of this amount being due as they were not informed of the extent of the liability. Petitioners would contend that, before issuing the certificate, the respondent Board had not determined any liability and, since the petitioners were not defaulters, these amounts could not be recovered from them as any such recovery would be contrary to Section 19 of the A.P. Khadi and Village Industries Act, 1958. Petitioners would submit that, since the Board had not taken any steps against M/s Radheshyam Khadi and Village

Industries Association, Narsapur for recovery of the amount nor had they taken possession of the machinery which was hypothecated to the Board which, even according to them, was valued at Rs.8,86,534/-, the action of the Board was not a bonafide exercise of power and ran contrary to Section 19 of the A.P. Khadi and Village Industries Act, 1958. Petitioners would plead violation of principles of natural justice on the ground that no opportunity was given to them to establish that they were not liable to pay the amounts due from M/s Radheshyam Khadi and Village Industries Association, Narsapur. It is contended that, since the entire action was initiated only after the demise of their father Sri G.V. Narayana Reddy, who had given a security bond for Rs. 2,68,500/-, the petitioners, as his L.Rs, were not liable to pay any amount, their properties were not liable for attachment and, if the Board desired to recover the amounts, they had to first recover the same from M/s Radheshyam Khadi and Village Industries Association, Narsapur. Petitioners would contend that the respondent Board was not empowered to adjudicate disputed questions of title and if they intended to proceed against the ancestral properties of the petitioners, given as security by their father late Sri G.V.Narayana Reddy, the Board had to file a suit seeking partition to the extent of Sri G.V. Narayana Reddy's share.

In their counter-affidavit, the respondents would put the very maintainability of the writ petition in issue on the ground that the petitioners had invoked the jurisdiction of this Court, under Article 226 of the Constitution of India, without exhausting the alternative remedy provided for under Section 57 of the Revenue Recovery

Act, 1864. It is stated that the respondent Board had sanctioned financial assistance of Rs.4.80 lakhs to M/s. Radheshyam Khadi and Village Industries Association, Narsapur, Adilabad District, towards capital expenditure loan for machinery and equipment for the purpose of setting up of a Hydraulic Khandsari Unit. The Association was headed by the petitioner's father Sri G.V. Narayana Reddy. It is stated that financial assistance was sanctioned by the Board as per the pattern of financial assistance prescribed by the Khadi & Village Industries Commission, Bombay, that the Unit was not completely established and did not commence production and that, in terms of the sanction, the petitioner's father Sri G.V. Narayana Reddy, the President of the Association, had offered his own agricultural lands and house situated at Narsapur Village as security for ensuring due repayment of the loans advanced to the Association. The security bond had been registered as document No. 206/77 dated 04.03.1977 in the office of the Sub-Registrar, Nirmal, Adilabad District, and the Association had also mortgaged Ac.8.00cts of land, purchased by it, in favour of the respondent-board. According to the respondents, the Association was also personally liable to the extent of five times the share capital subscribed in terms of clause 8 of the Memorandum of Association. It is stated that the petitioner's father expired in the year 1986 and that the other members did not evince any interest to ensure that the unit commenced operations. According to the respondents the Board, while issuing a recovery certificate under Section 19 of the A.P. Khadi & Village Industries Board Act, 1958, had addressed a letter

to the District Collector, Adilabad on 13.10.1987 requesting him to realize the amounts due from the Association as arrears of land revenue under the provisions of the A.P. Revenue Recovery Act, 1864. It is stated that the question of issuing a notice, of the proposed action to refer the matter to the Collector, did not arise since the Association had become defunct. It is stated that the M.R.O, Dilwarpoor Mandal, acting under the instructions of the District Collector, had initiated action for realizing the dues under the Revenue Recovery Act and that he had issued notice to the petitioners. It is contended that the petitioners have no locus standi either to question the transaction between the respondent Board and the Association or about the machinery purchased by it. It is stated that action was initiated against the petitioners, by the M.R.O, since they were the sons of the surety late Sri G.V. Narayana Reddy, and were in possession of the properties offered as security/mortgaged to the Board. It is stated that, based on a representation submitted by the petitioners on 29.04.1992 to the Chairman of the Board, the 1st respondent had requested the District Collector, vide letter dated 19.05.1992, to stop recovery proceedings until further communication from the Board, that the 1st petitioner was issued notices, on 14.07.1992 and 04.11.1992, to go over to the office of the respondent Board for verification of the accounts and that, despite acknowledging receipt of the notice on 09.11.1992, the petitioners had not chosen to attend for verification of the accounts/records. It is stated that the Board was left with no option but to address the District Collector on 06.01.1993 to proceed with the recovery proceedings, since

several opportunities given to the first petitioner were not availed by them. Respondents would deny that action was initiated against the petitioners on the ground that they had availed a loan from the Board and would submit that it was due to the fact that they were the heirs of the late surety and were in possession of the properties mortgaged/offered as security to the Board. It is contended that the properties, offered as security by late Sri G.V. Narayana Reddy, were his self-acquired properties, as per the declaration and documentary evidence produced by him and that the question, as to whether the properties offered as security were self-acquired or not, would not, normally, be adjudicated in writ proceedings under Article 226 of the Constitution of India and that the remedy available to the petitioners, if any, was to approach the competent civil court. It is stated that the security bond executed by late Sri G.V. Narayana Reddy, covers the total loan of Rs.4.80 lakhs sanctioned by the Board and that the total dues payable, including normal and penal interest on the principal loan of Rs.4.80 lakhs, was Rs.12.43 lakhs by 31st March 1993 itself and that, in addition, normal and penal interest, from 01.04.1993 onwards till the date of realization, was also payable. It is stated that the recovery proceedings initiated against the sureties simultaneously was valid under Section 50 of the A.P. Revenue Recovery Act, 1864 and, since the petitioners were in possession of the properties mortgaged/secured to the Board, they were legally bound to discharge the liability incurred by their late father and that the action initiated by the respondent Board for recovery of the dues payable to the Board under Section 19 of the A.P. Khadi and

Village Industries Boards Act, 1958 was valid and was not in violation of Article 14 of the Constitution of India. It is stated that the District Collector was requested on 19.05.1992 to stop recovery proceedings with a view to afford an opportunity to the 1st petitioner and, since he had failed to avail the opportunity, the District Collector was again requested on 06.01.1993 to proceed with the recovery. Respondents would submit that the petitioners had rushed to this Court, without exhausting the alternative remedy under Section 57-A of the A.P. Revenue Recovery Act 1864, and that the writ petition as filed was premature and not maintainable.

Sri A. Narasimha Reddy, learned Counsel for the petitioners, would question the restraint order and the proceedings of the respondents dated 06.03.1992 seeking to recover the amounts, payable by M/s Radheshyam Khadi and Village Industries Association, Narsapur, from the petitioners, as arbitrary and illegal on the following grounds:

1. Recovery of the amounts due, as arrears of land revenue, is governed by Section 19 of the A.P. Khadi and Village Industries Boards Act, which requires the defaulter to be given an opportunity of making a representation against the action proposed, before a certificate is issued to the Collector. No such opportunity was given to the petitioners.
2. Section 8 of the Revenue Recovery Act only speaks of attachment of movable property and not immovable property and it is Section 25 which relates to immovable property. Action taken, under Section 8 of the Revenue Recovery Act,

is without jurisdiction.

3. Since the arrears fell due in 1976, the claim is barred by limitation under Sections 62 and 63 of the Limitation Act.
4. Under Section 7 of the Revenue Recovery Act the interest on arrears of revenue cannot exceed 6% per annum whereas the arrears due was sought to be recovered along with normal and penal interest.

Learned Counsel would submit that, under Section 19 of the A.P. Khadi and Village Industries Boards Act, 1958, while any loan or advance granted by the Board may, without prejudice to any other mode of recovery, be recovered as arrears of land revenue, on the basis of a certificate issued by the Board for the amount due, to the Collector of the District concerned, no such certificate under sub-section (1) of Section 19 could be issued unless the defaulter was given an opportunity of making a representation against the proposed action. Learned Counsel would submit that, since the petitioners had not been put on notice, they had been denied the opportunity prescribed under the first proviso to Section 19 of the Act.

On the question as to whether any prejudice was caused in this regard, and since the fact that the petitioner's father had given security for the amount was not in dispute, learned Counsel would refer to paragraph 6 of the affidavit to submit that since the property given as security, by the petitioners' father, was their ancestral property and the security offered was only for Rs.2,68,500/-, while the amounts mentioned in the restraint order was Rs.12.10.800/-, the petitioners had clearly suffered prejudice

in this regard in not being given an opportunity of being heard. Learned Counsel would place reliance on **Canara Bank Vs. Debasis Das**[1].

Learned Counsel would submit that, while Section 8 of the A.P. Revenue Recovery Act relates to seizure and sale of movable property, section 25 relates to attachment of land and thereunder the Collector is required to cause a written demand to be served upon the defaulter specifying the amount due. Learned Counsel would refer to the certificate given by the Chief Executive of the Board, authorizing the Mandal Revenue Inspector to recover the dues from the petitioner, which is an auction notice under Section 8. Learned Counsel would submit that, since action was taken under Section 8 of the Revenue Recovery Act which does not relate to immovable properties, the entire action of the respondents in this regard is without jurisdiction.

On the question of limitation, learned Counsel would submit that under Article 63(b) of the Limitation Act, the period of limitation is 12 years and since the year, as shown in the distraint order, is 1976 and the 12 years period expired by 1988, the certificate issued in 1992 is barred by limitation. While fairly conceding that no plea of limitation had been taken, in the affidavit filed in support of the writ petition, learned Counsel would submit that failure to take such a plea was of no consequence as once the claim was barred by limitation the amounts, even if due, could not be recovered. Learned Counsel would place reliance on **State of Kerala Vs. V.R. Kalliyanikutty**[2], **Narne Rama Murthy Vs.**

Ravula Somasundaram[3] and **N.A. Radha Vs. State of Andhra Pradesh**[4] in this regard.

Learned Counsel would refer to Section 7 of the A.P. Revenue Recovery Act which provides that the arrears of revenue shall bear interest at the rate of 6% p.a. and would submit that neither interest in excess of 6% p.a. nor penal interest could be collected, even if the respondents were held entitled to recover the amount mentioned as due in the certificate. Learned Counsel would submit that, since the respondents had chosen to invoke the provisions of the Revenue Recovery Act, the jurisdiction of the Civil Court was impliedly barred and it must be held that the respondents were entitled to claim interest, on the arrears due, only upto a maximum of 6% per annum.

Sri V.T.M. Prasad, learned Standing Counsel for the Respondent Board, would refer to the provisions of the A.P. Khadi and Village Industries Boards Act to submit that the said Act was made with the laudable object of promoting Khadi and Village Industries in the State of Andhra Pradesh. Learned Standing Counsel would submit that the amount sanctioned as loan to the Association had still not been recovered despite a lapse of more than two decades. He would submit that the dispute, if any, was contractual in nature and the remedy was not by invoking the jurisdiction of this Court under Article 226 of the Constitution of India, but by approaching the Civil Court of competent jurisdiction. Learned Standing counsel would refer to the letter addressed by the petitioner's father to the Chief Executive Officer of the Board on 10.12.1976 wherein he had stated that on 01.12.1976 he had

deposited the title deeds of the immovable properties referred to in the said letter with the intent to secure repayment of all the monies due to the A.P. Khadi and Village Industries Board, from time to time, from M/s Radheshyam Khadi and Village Industries Association, Narsapur, Adilabad District. The petitioners father had stated that the Association and himself, either solely or jointly with any other person, would be liable for the amount advanced as loan including commission and expenditure. The property given as security was of an extent of Ac.8.00cts of land from out of Ac.13.27 cts situated in Sy. No. 638 of Narsapur village in Nirmal Taluq in Adilabad District and the sale deed dated 08.10.1976, with registration as document No. 2168/76, was deposited with the Respondent Board. Learned Standing Counsel would refer to the order of this Court, in W.V.M.P. No. 2641 of 1994 in W.P. No. 8297 of 1993 dated 26.02.1996, wherein this Court had noted the submissions made on behalf of the petitioners that they had no objection if the property of the Association was sold and the amount realized notwithstanding the fact that the said land was mutated in the Revenue Records. This Court granted liberty to the Board to execute the certificate and realize the amount by selling the said land.

Before examining the rival contentions, it is necessary to note the relevant statutory provisions. The A.P. Khadi and Village Industries Boards Act, 1958 came into force on 03.11.1958. Section 2(2) thereof defines the “Board” to mean the A.P. Khadi and Village Industries Board constituted under Section 3. Section 3 relates to establishment and constitution of the Board and

thereunder the A.P. Khadi and Village Industries Board shall be a body corporate having perpetual succession and a common seal. Section 19 of the Act relates to recovery of arrears and reads thus:

"Where any loan or advance granted by Board to any institution or person is not repaid before the date specified therefore, or where any other amount is due to the Board, from any person or institution either under a contract or otherwise, the Board may without prejudice to any other mode of recovery, issue a certificate for the amount due to the Collector of the District concerned and the Collector proceed to recover the amount in the same manner as an arrear of Land Revenue.

i. "Provided that no certificate under this sub-section shall be issued unless the defaulter has been given an opportunity of making a representation against the action proposed:

ii. Provided further that it shall be lawful for the Board to issue succession Certificates under this sub-section to the Collector for the realization of its dues in full, if it is satisfied that the defaulter has come into possession of assets from which it can recover its dues".

The Board may write off irrecoverable losses with the previous sanction of the Government or the Commission as the case may be subject to such limits as may be laid down in thfe regulations."

Section 7 of the A.P. Revenue Recovery Act, 1864 relates to interest on arrears and thereunder arrears of revenue shall bear interest at the rate of 6% p.a. Section 8 prescribes the Rules for seizure and sale of movable property and Section 25, which relates to the demand to be served prior to attachment of land and the mode of service, reads thus:-

Before a Collector, or other officer empowered by the Collector on that behalf proceeds to attach the land of the defaulter, or buildings thereon, he shall cause a written demand to be served upon the defaulter, specifying the amount due, the estate or land in respect of which it is claimed, the name of the party in arrear, the batta due to the person who shall serve the demand, and the time allowed for payment, which shall be fixed with reference to the distance from land on which the arrear is due to the place at which the money is to be paid. Such demand shall be served by delivering a copy to the defaulter, or to some adult male member of his family at his usual pale of abode, or to his authorized agent, or by affixing a copy thereof on some

conspicuous part of his last known residence, or on some conspicuous part of the land about to be attached.

Section 52-A, which relates to recovery of sums due to certain banks and other public bodies as arrears of land revenue, reads as under:

Without prejudice to any other mode of recovery which is being taken or may be taken, all loans granted and all advances made to any person-

i. by any bank to which the repayment of the said loans and advances is guaranteed by the State Government or;

ii. by such Corporation established by or under the Central Provincial or State Act, or Government Company as defined in Section 617 of the Companies Act, 1956, or such other public body as ;may be notified in this behalf by the State Government in the Andhra Pradesh Gazette;

together with interest on such loans and advances and all sums, such as rents, margin money and the like, due to the bodies mentioned aforesaid may be recovered in the same manner as arrears of land revenue under the provisions of the Act:

Provided that the State Government may, by notification in Andhra Pradesh Gazette, specify the loans and advances together with interest therein, and other sum due to the bodies mentioned in item (ii) above which may be recoverable under the provisions of this section.

Explanation:- In this sub-section, “bank”, means any banking company as defined in clause (c) of Section 5 of the Banking Regulation Act, 1949, and includes-

a. the Reserve Bank of India constituted under the Reserve Bank of India Act, 1934.

b. The State Bank of India constituted under the State Bank of India Act,1955.

c. Any subsidiary bank as defined in the State Bank of India (Subsidiary Bank) Act, 1959;

d. Any corresponding new bank constituted under Section3 of the Banking Companies (Acquisition and Transfer of Undertaking) Act, 1970.

2. Out of the proceeds of the dues pertaining to the bodies mentioned in item (ii) of sub-section (1) so recovered ten per centum thereof shall be deducted towards the collection charges and the balances shall be paid by the Collector or other officer empowered by the Collector in that behalf, to the respective bodies.

Section 54 relates to interest and charges recoverable as

arrears and read as under:-

> The batta mentioned in the foregoing section, as well as interest, and all costs and charges incurred under the authority of this Act, shall be recoverable from the defaulter and his sureties in the same manner as arrears of land revenue.

Part V of the schedule to the Limitation Act, pertains to suits relating to immovable property and Articles 62 and 63 thereunder read thus:

62. To enforce payment of money secured by a mortgagee or otherwise charged upon immovable property.	Twelve years	When the money sued for become due
By a mortgagee--		
a. for foreclosure	Thirty years	When the money secured by the mortgagee becomes due.
b. for possession of immovable property mortgaged.	Twelve years	When the mortgagee becomes entitled to possession.

The first proviso to Section 19 of the A.P. Khadi and Village Industries Boards Act, 1958 requires the defaulter to be given an opportunity of making a representation, against the action proposed, before a certificate for the amount due is given by the Board to the District Collector for recovery of the amounts due as arrears of land revenue. While Sri A. Narasimha Reddy, learned Counsel for the petitioner, would contend that, failure to give such an opportunity to the petitioners herein would render the certificate issued by the Board invalid, Sri V.T.M. Prasad, learned Standing Counsel for the Respondent Board, would contend that the opportunity of making a representation is required to be provided

to the defaulter and since it was Sri G.V. Narayana Reddy, their father and not the petitioners herein, who was the defaulter, the first proviso to Section 19 of the Act has no application to the petitioners herein. Learned Standing counsel would contend that, in any event, the petitioners were issued notices, on 14.07.1992 and 04.11.1992, to go over to the office of the respondent Board for verification of the accounts and that, despite acknowledging receipt of the notice on 09.11.1992, the petitioners had not chosen to attend for verification of the accounts/records and since the opportunity provided, was not availed of by the petitioners herein, it was not open to them to turn around and contend that they were denied the opportunity prescribed under the first proviso to Section 19 of the Act. Learned Standing Counsel would contend that the petitioners herein have successfully dragged on the proceedings and, as a result, the Board has not been able to recover the amounts due to it for the past more than two decades.

The ultimate test is of prejudice and this Court would, ordinarily, not exercise its discretion, under Article 226 of the Constitution of India, to interfere, unless failure of justice is occasioned or it would not be in public interest to dismiss the petition.

In **Debasis Das**[1], the Supreme Court observed:

> "..... Natural justice is another name for common-sense justice. Rules of natural justice are not codified canons. But they are principles ingrained into the conscience of man. Natural justice is the administration of justice in a common-sense liberal way. Justice is based substantially on natural ideals and human values. The administration of justice is to be freed from the narrow and restricted considerations which are usually associated with a formulated law involving linguistic technicalities and grammatical niceties. It is the substance of justice which has to determine its form.

The expressions natural justice and legal justice do not present a watertight classification. It is the substance of justice which is to be secured by both, and whenever legal justice fails to achieve this solemn purpose, natural justice is called in aid of legal justice. Natural justice relieves legal justice from unnecessary technicality, grammatical pedantry or logical prevarication. It supplies the omissions of a formulated law. As Lord Buckmaster said, no form or procedure should ever be permitted to exclude the presentation of a litigants defence.

The adherence to principles of natural justice as recognized by all civilized States is of supreme importance when a quasi-judicial body embarks on determining disputes between the parties, or any administrative action involving civil consequences is in issue. These principles are well settled. The first and foremost principle is what is commonly known as audi alteram partem rule. It says that no one should be condemned unheard. Notice is the first limb of this principle. It must be precise and unambiguous. It should apprise the party determinatively of the case he has to meet. Time given for the purpose should be adequate so as to enable him to make his representation. In the absence of a notice of the kind and such reasonable opportunity, the order passed becomes wholly vitiated. Thus, it is but essential that a party should be put on notice of the case before any adverse order is passed against him. This is one of the most important principles of natural justice. It is after all an approved rule of fair play. The concept has gained significance and shades with time. When the historic document was made at Runnymede in 1215, the first statutory recognition of this principle found its way into the Magna Carta. The classic exposition of Sir Edward Coke of natural justice requires to vocate, interrogate and adjudicate. In the celebrated case of *Cooper* v. *Wandsworth Board of Works* 2 the principle was thus stated: (ER p. 420)

[E]ven God himself did not pass sentence upon Adam before he was called upon to make his defence. Adam (says God), where art thou? Hast thou not eaten of the tree whereof, I commanded thee that thou shouldest not eat?

Since then the principle has been chiselled, honed and refined, enriching its content. Judicial treatment has added light and luminosity to the concept, like polishing of a diamond.

Principles of natural justice are those rules which have been laid down by the courts as being the minimum protection of the rights of the individual against the arbitrary procedure that may be adopted by a judicial, quasi-judicial and administrative authority while making an order affecting those rights. These rules are intended to prevent such authority from doing injustice.

"……. Concept of natural justice has undergone a great deal of change in recent years. Rules of natural justice are not rules embodied always

expressly in a statute or in rules framed thereunder. They may be implied from the nature of the duty to be performed under a statute. What particular rule of natural justice should be implied and what its context should be in a given case must depend to a great extent on the facts and circumstances of that case, the framework of the statute under which the enquiry is held. The old distinction between a judicial act and an administrative act has withered away. Even an administrative order which involves civil consequences must be consistent with the rules of natural justice. The expression civil consequences encompasses infraction of not merely property or personal rights but of civil liberties, material deprivations and non-pecuniary damages. In its wide umbrella comes everything that affects a citizen in his civil life……."

…….. How then have the principles of natural justice been interpreted in the courts and within what limits are they to be confined? Over the years by a process of judicial interpretation two rules have been evolved as representing the principles of natural justice in judicial process, including therein quasi-judicial and administrative process. They constitute the basic elements of a fair hearing, having their roots in the innate sense of man for fair play and justice which is not the preserve of any particular race or country but is shared in common by all men. The first rule is *nemo judex in causa sua* or *nemo debet esse judex in propria causa sua* as stated in *Earl of Derbys case* 16 that is, no man shall be a judge in his own cause. Coke used the form *aliquis non debet esse judex in propria causa, quia non potest esse judex et pars* (Co. Litt. 1418), that is, no man ought to be a judge in his own case, because he cannot act as judge and at the same time be a party. The form *nemo potest esse simul actor et judex*, that is, no one can be at once suitor and judge is also at times used. The second rule is *audi alteram partem*, that is, *hear the other side*. At times and particularly in continental countries, the form *audietur et altera pars* is used, meaning very much the same thing. A corollary has been deduced from the above two rules and particularly the audi alteram partem rule, namely *qui aliquid statuerit, parte inaudita altera acquum licet dixerit, haud acquum fecerit* that is, he who shall decide anything without the other side having been heard, although he may have said what is right, will not have been what is right [see *Boswels case* 17 (Co Rep at p. 52-a)] or in other words, as it is now expressed, justice should not only be done but should manifestly be seen to be done. Whenever an order is struck down as invalid being in violation of principles of natural justice, there is no final decision of the case and fresh proceedings are left upon (*sic* open). All that is done is to vacate the order assailed by virtue of its inherent defect, but the proceedings are not terminated.

……..As was observed by this Court we need not go into useless formality theory in detail; in view of the fact that no prejudice has been shown. As is rightly pointed out by learned counsel for the appellants, unless failure of justice is occasioned or that it would not be in public interest to dismiss a petition on the fact situation of a case,

this Court may refuse to exercise the said jurisdiction (see *Gadde Venkateswara Rao* v. *Govt. of A.P.*[30]). It is to be noted that legal formulations cannot be divorced from the fact situation of the case. Personal hearing was granted by the Appellate Authority, though not statutorily prescribed. In a given case post-decisional hearing can obliterate the procedural deficiency of a pre-decisional hearing. (See *Charan Lal Sahu* v. *Union of India*[31].)

Additionally, there was no material placed by the employee to show as to how he has been prejudiced. Though in all cases the post-decisional hearing cannot be a substitute for pre-decisional hearing, in the case at hand the position is different. The position was illuminatingly stated by this Court in *Managing Director, ECIL* v. *B. Karunakar*1 (SCC at p. 758, para 31) which reads as follows:

"Hence, in all cases where the enquiry officers report is not furnished to the delinquent employee in the disciplinary proceedings, the courts and tribunals should cause the copy of the report to be furnished to the aggrieved employee if he has not already secured it before coming to the court/tribunal and give the employee an opportunity to show how his or her case was prejudiced because of the non-supply of the report. If after hearing the parties, the court/tribunal comes to the conclusion that the non-supply of the report would have made no difference to the ultimate findings and the punishment given, the court/tribunal should not interfere with the order of punishment. The court/tribunal should not mechanically set aside the order of punishment on the ground that the report was not furnished as is regrettably being done at present. The courts should avoid resorting to short cuts. Since it is the courts/tribunals which will apply their judicial mind to the question and give their reasons for setting aside or not setting aside the order of punishment, (and not any internal appellate or revisional authority), there would be neither a breach of the principles of natural justice nor a denial of the reasonable opportunity. It is only if the court/tribunal finds that the furnishing of the report would have made a difference to the result in the case that it should set aside the order of punishment. Where after following the above procedure, the court/tribunal sets aside the order of punishment, the proper relief that should be granted is to direct reinstatement of the employee with liberty to the authority/management to proceed with the inquiry, by placing the employee under suspension and continuing the inquiry from the state of furnishing him with the report. The question whether the employee would be entitled to the back wages and other benefits from the date of his dismissal to the date of his reinstatement if ultimately ordered, should invariably be left to be decided by the authority concerned according to law, after the culmination of the proceedings and depending on the final outcome. If the employee succeeds in the fresh inquiry and is directed to be reinstated, the authority should be at liberty to decide according to law how it will treat the period from the date of dismissal till the reinstatement and to what benefits, if any and the extent of the benefits, he will be entitled. The reinstatement made as a result of the setting aside of the inquiry for failure to furnish the report, should be treated as a reinstatement for the purpose of holding the fresh inquiry from the stage of furnishing the report and no more, where such fresh inquiry is held. That will also be the correct position in law….." (emphasis supplied)

With a view to ensure that no injustice was caused to the petitioners herein, the respondents were directed to produce the

records and make available the same for verification. Learned Counsel for the petitioner, after perusal of the records, and on instructions, would submit that, while the manner in which and the method of computation of the amounts due may not be incorrect, the petitioners herein had claimed that the property, which was mortgaged to the respondent Board by Sri G.V. Narayana Reddy, was his ancestral property and that Sri G.V. Narayana Reddy was not entitled to mortgage the ancestral property in favour of the Board more so since the said mortgage was not for the benefit of the joint family. Sri V.T.M. Prasad, learned Standing Counsel for the Respondent Board, on the other hand, would contend that various documents submitted by Sri G.V. Narayana Reddy to the Board would establish that the property mortgaged was the self-acquired property of Sri G.V. Narayana Reddy and not his ancestral property and that the claim of the petitioners in this regard was without basis. This is the only contention, which the petitioners herein, intended to put across to the Respondent Board in case they were given an opportunity of making a representation against the action proposed before a certificate was issued by the Board to the District Collector. Since the petitioners' claim, of the mortgaged property being ancestral property, is disputed by the Respondent Board and it is their case that the mortgaged property was the self-acquired property of Sri G.V. Narayana Reddy, even if an opportunity of making a representation had been provided to the petitioners herein, their contention would only have been rejected. The opportunity of making a representation, in these facts and circumstances, would only have been an empty

formality. The petitioners cannot be said to have been prejudiced as a result of their being denied such an opportunity. Lest it be construed otherwise, it is made clear that this Court has not expressed any opinion on the question whether the mortgaged property was the ancestral or self-acquired property of late Sri G.V. Narayana Reddy. Suffice it to state that it is not for this Court, in proceedings under Article 226 of the Constitution of India, to determine these disputed questions of fact. If the petitioners have any grievance in this regard the forum, for adjudication, is the Civil Court of competent jurisdiction and not by invoking the public law remedy under Article 226 of the Constitution of India, since the disputes are not in the public law domain. Except for the aforesaid contention no other reasons are forthcoming, in the affidavit filed in support of the writ petition, as to how the petitioners have been prejudiced on their not being given an opportunity of being heard. Since the requirement of providing an opportunity of being heard, under the first proviso to Section 19, is to prevent failure of justice and since neither prejudice has been shown to have been caused by denial of such an opportunity nor have the petitioners been able to substantiate as to how, providing such an opportunity, would have resulted in the certificate not being issued I see no reason to exercise the discretionary jurisdiction of this Court, under Article 226 of the Constitution of India, to interfere in their favour.

The contention, that Section 8 of the A.P. Revenue Recovery Act, which is referred to in the certificate, relates to movable property and as the property sought to be attached and

proceeded against, for recovery of the amounts due, is immovable properties, the proceedings initiated by the respondents is without jurisdiction, is only to be noted to be rejected. It is well settled that as long as the power is traceable to an enabling provision under the statute, even if the said provision is not specifically referred to, or instead a wrong provision has been referred to, the action must be deemed to have been taken and the order deemed to have been passed under the enabling provision. (**M/s. Pine Chemicals Ltd. Vs. Assessing Authority**[5], **Indian Aluminium Company Vs. Kerala State Electricity Board**[6]; **Peerless General Finance & Investment Co. Ltd Vs. Reserve Bank of India**[7]; **B.S.E. Brokers Forum Vs. SEBI**[8]). It is not in dispute that action could have been taken and the certificate issued under Section 25 of the A.P. Revenue Recovery Act. The mere fact that Section 8 has been referred to in the certificate is, therefore, of no consequence.

The plea of the claim being barred by limitation, does not also merit acceptance. Sri A. Narasimha Reddy, learned Counsel for the petitioner, while fairly conceding that no such plea has been taken in the affidavit filed in support of the writ petition, would submit that even in the absence of such a plea, this contention can be raised even during the course of hearing. It is therefore necessary to refer to the judgments cited. I n **V.R. Kalliyanikutty**[2], the Supreme Court observed:

"……. In our view if such a wide interpretation is put on the words amount due under the Kerala Revenue Recovery Act, there is every likelihood of the provisions of Article 14 being attracted. This Court in the

case *Director of Industries, U.P.* v. *Deep Chand Agarwal*1 justified the special procedure for recovery of certain debts under the U.P. Public Moneys (Recovery of Dues) Act, 1965 on the ground that the amounts which were advanced by the State or by the financial institutions were for the economic betterment of the people of that State. Speedy recovery of these amounts was necessary so that these amounts could be reutilized for the same public purpose. It is doubtful if this public purpose would extend to granting exemption to these claims from the statute of limitation. The law of limitation itself rests on the foundations of public interest. The courts have expressed at least three reasons for supporting the existence of statutes of limitation:

(*1*) that long dormant claims have more of cruelty than justice in them;

(*2*) that a defendant might have lost the evidence to disprove a stale claim; and

(*3*) that persons with good causes of action should pursue them with reasonable diligence.

(See *Halsburys Laws of England*, 4th Edn., Vol. 28, para 605.)

In *Nav Rattanmal* v. *State of Rajasthan*5 the statutes of limitation have been considered as statutes of repose and statutes of peace. The generally accepted basis for such statutes is that they are designed to effectuate a beneficent public purpose. Whether public purpose of speedy recovery would outweigh public purpose behind a statute of limitation is a moot point. But we need not examine this aspect any further in view of our interpretation of the words amounts due in Section 71.

It has been submitted before us that the statute of limitation merely bars the remedy without touching the right. Therefore, the right to recover the loan would remain even though the remedy by way of a suit would be time-barred. Reliance was placed on *Khadi Gram Udyog Trust* v. *Ram Chandraji Virajman Mandir*4 in this connection. The Court there observed that though a debt may be time-barred, it would still be a debt due. The right remains untouched and if a creditor has any means of enforcing his right other than by action or set-off, he is not prevented from doing so. In *Punjab National Bank* v. *Surendra Prasad Sinha*6 (SCC at pp. 503-504) this Court held that the rules of limitation are not meant to destroy the rights of parties. Section 3 of the Limitation Act only bars the remedy but does not destroy the right which the remedy relates to. Excepting cases which are specifically provided for, as for example, under Section 27 of the Limitation Act, the right to which the remedy relates subsists. Though the right to enforce the debt by judicial process is barred, that right can be exercised in any manner other than by means of a suit. For example, a creditors right to make adjustment against time-barred debts exists.

There is no question, however, in the present case of any payment voluntarily made by a debtor being adjusted by his creditor against a time-barred debt. The provisions in the present case are statutory provisions for coercive recovery of amounts due. Although the necessity of filing a suit by a creditor is avoided, the extent of the claim which is legally recoverable is not thereby enlarged. Under Section 70(2) of the Kerala Revenue Recovery Act the right of a debtor to file a suit for refund is expressly preserved. Instead of the bank or the financial institution filing a suit which is defended by the debtor, the creditor first recovers and then defends his recovery in a suit filed by the debtor. The rights of the parties are not thereby enlarged. The process of recovery is different. An Act must expressly provide for such enlargement of claims which are legally recoverable, before it can be interpreted as extending to the recovery of those amounts which have ceased to be legally recoverable on the date when recovery proceedings are undertaken. Under the Kerala Revenue Recovery Act such a process of recovery would start with a written requisition issued in the prescribed form by the creditor to the Collector of the district as prescribed under Section 69(2) of the said Act. Therefore, all claims which are legally recoverable and are not time-barred on that date can be recovered under the Kerala Revenue Recovery Act…….

…….In the premises under Section 71 of the Kerala Revenue Recovery Act claims which are time-barred on the date when a requisition is issued under Section 69(2) of the said Act are not amounts due under Section 71 and cannot be recovered under the said Act. Our conclusion is based on the interpretation of Section 71 in the light of the provisions of the Kerala Revenue Recovery Act.

In **N.A. Radha**[4], this Court held:-

"……In view of the decision of the Supreme Court in **State of Kerala Vs. Kaliyani Kutty: AIR 1999SC 1305**" , **proceedings under the Act cannot lie for recovery of amounts that are barred by limitation. The question that arises is whether the claim of the respondent-Corporation is barred by limitation and whether this question would be adjudicated in these proceedings…….**

……On the facts pleaded in response to the specific plea of the petitioners that the claim is barred by limitation it is clear that the claim was barred by limitation even by 5.10.1988 the date of demand by the Corporation. Both an action for enforcement of payment of money secured by a mortgage or otherwise charged upon an immovable property (12 years under Article 62 of the Limitation Act, 1963, for short 'the Limitation Act') and an action where no period of limitation is provided (Article 137 of the Limitation Act), was not available by 1988……" (emphasis supplied)

In **Narne Rama Murthy Vs. Ravula Somasundaram**[9], the Supreme Court observed:

"…….. We also see no substance in the contention that the suit was barred by limitation and that the courts below should have decided the question of limitation. **When limitation is the pure question of law and from the pleadings itself it becomes apparent that a suit is barred by limitation, then, of course, it is the duty of the court to decide limitation at the outset even in the absence of a plea. However, in cases where the question of limitation is a mixed question of fact and law and the suit does not appear to be barred by limitation on the face of it, then the facts necessary to prove limitation must be pleaded, an issue raised and then proved. In this case the question of limitation is intricately linked with the question whether the agreement to sell was entered into on behalf of all and whether possession was on behalf of all. It is also linked with the plea of adverse possession.** Once on facts it has been found that the purchase was on behalf of all and that the possession was on behalf of all, then, in the absence of any open, hostile and overt act, there can be no adverse possession and the suit would also not be barred by limitation. The only hostile act which could be shown was the advertisement issued in 1989. The suit filed almost immediately thereafter……." (emphasis supplied)

In cases where limitation is a pure question of law and from the pleadings itself it becomes apparent that the suit is barred by limitation, it is the duty of the court to decide limitation at the outset, even in the absence of a specific plea. The question which, therefore, arises is as to whether from the pleadings and documents on record, it is apparent that the claim of the respondents, for recovery of the amounts due, is barred by limitation. Sri A. Narasimha Reddy, learned Counsel for the petitioner, would place reliance on column 5 of the distraint order which prescribes the date on which the arrears fell due. Therein the year is mentioned as 1976. Learned Counsel would contend that, since under Articles 62 and 63 of the Limitation Act, the limitation prescribed is 12 years, the right to recover the arrears

was barred by limitation after 1988 and since the certificate was issued only in the year 1992, the entire proceedings under the A.P. Revenue Recovery Act were barred by limitation and are required to be quashed. Along with their counter-affidavit, the respondents have filed documents wherein details are furnished of the schedule of repayment. The schedule would reveal that the loan amount was liable to be repaid in instalments commencing from 10.09.1978 till 10.09.1986. The sanction order itself is dated 10.09.1976. The distraint order, (a typed copy of which has been filed by the petitioners), has obviously erroneously mentioned the year of sanction of the loan as the date on which the arrears fell due. As is clear from the sanction order, no arrears fell due in the year 1976 as the first instalment fell due only in September, 1978. Except for the erroneous reference in the distraint order, there is nothing else on record from which it is apparent that the claim of the respondents is barred by limitation. In any event, this Court would not, ordinarily, entertain a plea of limitation in proceedings under Article 226 of the Constitution of India. **Narne Rama Murthy**[8], was not a case which arose in writ proceedings under Article 226 of the Constitution of India but was an appeal arising from a civil suit. Reliance placed by the petitioners on the said judgment is therefore misplaced. The plea of the claim being barred by limitation must, therefore, be rejected.

The submission of Sri A. Narasimha Reddy, learned Counsel for the petitioner, that the arrears due cannot be recovered with penal interest, as Section 7 of the A.P. Revenue Recovery Act provides that interest on arrears of revenue cannot

exceed 6% per annum, however, merits acceptance. While it is open to the respondents to proceed, pursuant to the certificate issued by the respondent Board to recover the amounts due as arrears of land revenue, in view of the prohibition under Section 7 of the A.P. Revenue Recovery Act, the arrears as mentioned in the certificate can only be recovered along with interest at 6% p.a. and not in excess thereof. The remedy available to the respondents, to recover the excess interest claimed, if any, is only by invoking the jurisdiction of the Civil Court of competent jurisdiction and not under the provisions of the A.P. Revenue Recovery Act. I am, however, unable to accept the submission of Sri A. Narasimha Reddy, learned Counsel for the petitioner, that by invoking the provisions of the A.P. Revenue Recovery Act, the respondents, in effect, had waived their right to claim interest beyond 6% p.a. on the arrears due. No such inference of waiver should be easily drawn, more so, when the claim of interest is contractual and the parties to the contract have specifically agreed upon the rate of interest, both normal and penal. While the statutory provisions under the A.P. Revenue Recovery Act provide that the arrears of revenue shall bear interest not beyond 6% p.a, that would not disentitle the respondents from taking recourse to such other remedies, as are available to them in law, for recovery of the remaining contractual portion of the interest due, as agreed upon between the petitioner's father and the 1st respondent.

Except to the limited extent that the interest which can be claimed by the respondents, on the arrears due, under the A.P. Revenue Recovery Act, cannot exceed 6% p.a., the writ petition

fails and is accordingly dismissed. However, in the circumstances, without costs.

_____

Date: -12-2006 RAMESH RANGANATHAN,J

MRKR/ASP

---

[1] 2003(4) SCC 557

[2] AIR 1999 SC 1305

[3] 2005(6) SCC 614

[4] 2000(2) ALD 560

[5] 1992)2 SCC 683

[6] 1975(2) SCC 414

[7] 1992(2) SCC 343

[8] 2001(3) SCC 482

[9] (2005)6 SCC 614